this is very real; it is perhaps more theoretical than real in the case of large scale trafficking in drugs, a crime of which the motive is cold calculated greed. But Article 12(1) of the Constitution is not concerned with equal punitive treatment for equal moral blameworthiness; it is concerned with equal punitive treatment for similar legal guilt.

In their Lordships' view there is nothing unconstitutional in the provision for a mandatory death penalty for trafficking in significant quantities of heroin and morphine. The minimum quantity that attracts the death penalty is so high as to rule out the notion that it is the kind of crime that might be committed by a good samaritan out of the kindness of his heart as was suggested in the course of argument. But if by any chance it were to happen, the prerogative of mercy is available to mitigate the rigidity of the law and is the long-established constitutional way of doing so in Singapore as in England.

In the instant cases the law required that sentences of death should be imposed. There is no substance in the contention that this requirement of the law is inconsistent with the Constitution. The appeals must be dismissed.

Appeals dismissed.

Solicitors: *Kingsford Dorman; Jaques & Co.*

CHIN AH LOY v. ATTORNEY GENERAL

[P.C. (Lord Diplock, Lord Salmon, Lord Keith of Kinkel & Lord Scarman) July 28 & October 15, 1980]

[Privy Council Appeal No. 7 of 1979]

Landlord and Tenant — Tenancy period for a 3 year term with option to renew for a further three year period — Tenancy determinable by three months' notice in writing — Correspondence — Warranty that tenancy will be renewed if services provided and prices charged satisfactory — No evidence of unsatisfactory service or failure to comply with rules and regulations — Tenancy terminated by giving three months' notice — Damages for breach of contract.

In this case the applicant had successfully tendered for a duty-free shop at the Singapore Airport and he received a letter stating —

> "Your tenancy will commence on the 1st February 1972 for a period of 3 years with option for extension of 3 years subject to the D.C.A. being satisfied with the quality of the services provided and prices charged."

Subsequently a tenancy agreement was sent to the appellant which contained a clause that "either party may terminate the tenancy at any time by giving to the other three months' previous notice in writing."

The appellants wrote to the Director of Civil Aviation and in reply was told that the clause was a standard one and that if he observed the rules and regulations of the tenancy agreement, the "tenancy may be considered as secure for the period in question". Subsequently however the appellants were given three months' notice to vacate, so that in effect the tenancy was not renewed.

The appellant bought an action for damages for breach of contract. Choor Singh J. held that as it had been agreed that the tenancy was to be renewed for three years from February 1, 1975 on the same terms as those which applied to the first three years, the Government could not terminate the second term of three years unless the appellant had failed to comply with the rules and regulations of the tenancy agreement. As there was no evidence that the appellant had ever failed to do so, he gave judgment in favour of the appellant for damages assessed at $604.890. The Court of Appeal however allowed the appeal of the Attorney-General (see [1979] 1 M.L.J. 278) and the appellant appealed to the Privy Council.

Held: (1) one of the terms of the tenancy agreement was the warranty by the Government that it would not attempt to put into operation the clause relating to the giving of three months' notice of termination unless the tenant failed to carefully observe the rules and regulations of the agreement;

(2) as there was no evidence that the appellant had failed to observe the rules and regulations of the agreement, the learned trial judge was right in finding that there had been a breach of contract and in giving damages to the appellant.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Colin Ross-Munroe Q.C. (*Stephen Nathan* with him) for the appellant.

J.S. Colyer Q.C. (*Chao Hick Tin* with him) for the respondent.

Cur. Adv. Vult.

In the High Court, the following oral judgment was delivered on March 17, 1978 by:

Choor Singh J.: I find for the plaintiff. The evidence clearly shows that the Government of Singapore committed a breach of the tenancy agreement when they terminated the plaintiff's tenancy of the shop in question. I accept the plaintiff's evidence that if not for the assurance given by the Director of Civil Aviation in his letter of June 27, 1975, that so long as the plaintiff carefully observed "the rules and regulations" of the tenancy agreement he could consider his tenancy as secure for the period in question, he would not have entered into the said agreement. By giving this assurance the Director of Civil Aviation bound the Government of Singapore not to invoke the termination clause so long as the plaintiff carried out his obligations under the tenancy agreement. The effect of this assurance was that the Government of Singapore could invoke clause 4(i) of the agreement only when the plaintiff had committed some breach of the tenancy agreement.

The Government, having accepted the plaintiff's exercise of his option, the tenancy agreement was renewed and was in force for a further period of three years as from February 1, 1975 but on January 31, 1975 the Government purported to terminate the tenancy by invoking clause 4(i) and giving the plaintiff three months' notice. The tenancy was renewed with effect from February 1, 1975 on the same terms and conditions which applied to the first term of three years. This meant that the Government could terminate the second term of three years only when they found the plaintiff had committed some breach of the tenancy agreement. On January 31, 1975 when the Government purported to terminate the second term by invoking clause 4(i), the plaintiff had not committed any breach of the tenancy agreement. In fact the second term had not yet commenced. It commenced on February 1, 1975, but the notice to terminate the second term was given on January 31, 1975. The Government had no valid grounds at all to terminate the second term and dispossess the plaintiff. In my judgment, on the factual evidence in this case, which is not in dispute, the plaintiff is entitled to damages for the loss suffered by him for not being allowed to operate his shop for a period of 2 years and 9 months.

It is submitted that the plaintiff can only recover his personal loss and that as the shop operated by him was a partnership business he could not recover the loss suffered by his brother, the other partner. I am unable to accept this submission. The plaintiff is the party to the tenancy agreement. This claim is brought by him as the lessee. What arrangement he had in regard to the sharing of the profits with his brother who helped him to operate the shop is irrelevant on the question of liability.

The real difficulty in this case is the assessment of damages for the loss suffered by the plaintiff. If the plaintiff had continued to operate his shop for the period in respect of which he is entitled to damages, he would have had competition from the other shop set up by the Singapore Airport Duty-Free Emporium (Pte.) Ltd. (hereinafter referred to as the "Emporium"). The Emporium shop was situated right in front of the plaintiff's shop. Passengers arriving at the arrival hall and going through the immigration check point would first reach the Emporium shop. It is submitted that the bulk of the business would have gone to the Emporium shop. I do not think this is very correct. The number of passengers arriving in modern planes is very large and passengers are always in a hurry to leave the airport as soon as possible. If a plane load of 100 passengers goes through the check point I cannot imagine all of them queuing up to be dealt with at the Emporium shop. In my opinion they would all scramble for early attention at both shops which were adjacent to each other. Both the shops were so close to each other that a passenger may think both were part of the same establishment. In my judgment the business would have been more or less equally distributed between the plaintiff's shop and the Emporium shop. Unfortunately the sales figures of the Emporium shop for the relevant period of two years and nine months have not been put before the court by either party. Further, it is alleged that the Emporium shop sold dutiable as well as duty-free goods and that it also sold goods which the plaintiff was not permitted to sell in his shop. I have therefore to fall back on the sales figures of the plaintiff's shop during his first term of three years. The plaintiff has put up in Exhibit P8 projected figures of sales from March 1, 1975 to February 28, 1978. He has added a 10 per cent growth rate for each year and he claims a 12 per cent net profit on the gross sales. I accept this 10 per cent growth rate and 12 per cent net profit but for the first year of the second term he is only entitled to profits for nine months. Therefore the figure for the first year of the second term must be reduced by one-fourth. After reduction it comes to $296,514. The total profits calculated on this basis therefore amount to $1,209,781. In my opinion half of these profits would have gone to the Emporium shop. The plaintiff is therefore entitled to $604,890. There will be judgment for $604,890 and costs as taxed.

From the above decision the Attorney-General appealed to the Court of Appeal ([1979] 1 M.L.J. 278). *On appeal by the appellant to the Judicial Committee of the Privy Council, the following judgment was handed down:*

Lord Salmon (delivering the judgment of the Board): This appeal turns upon the true construction of a number of letters passing between the appellant and the Government of Singapore.

On October 28, 1971 the Government of Singapore through the Director of Civil Aviation (D.C.A.) at Singapore Airport invited tenders for duty-free shops including Airport Shop No. 22. The appellant tendered as rent for that shop $3,000 a month or 15.009% of the monthly sales. After a discussion between the appellant and the D.C.A. on January 8, 1972 the D.C.A. accepted the appellant's tender by a letter dated January 11, 1972. This letter contained two important paragraphs which read as follows: —

paragraph 3. "Your tenancy will commence on February 1, 1972 for a period of 3 years with an option for extension of 3 years subject to the D.C.A. being satisfied with the quality of the services provided and prices charged."

The D.C.A. has never suggested that he was not satisfied with the quality of the services provided or prices charged by the appellant.

paragraph 6. "Would you please let me have your written confirmation by January 20, 1972 that you accept appointment as the operator and that you will operate the duty free shop for 3 years effective from February 1, 1972."

On May 3 more than two months after the appellant had been in occupation of the shop, the tenancy agreement (in quintuplicate) was sent to the appellant for his signature. Although clause 1 of the tenancy agreement recites that the tenant was to hold the shop for a term of 3 years, the appellant was, not unnaturally, astonished to find that, contrary to paragraph 3 of the D.C.A.'s letter of January 11, 1972, (a) clause 4(i) of the tenancy agreement provided that

"Notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other three (3) months' previous notice in writing."

and (b) the tenancy agreement did not mention the appellant's option of an extension of 3 years from February 1, 1975.

It is hardly surprising that the appellant was in no hurry to sign the tenancy agreement as he had gone into possession of the shop and spent substantial sums of money in improving it on the faith of the terms which were set out and promised by the D.C.A. in his letter of January 11, 1972 but which appeared to be contrary to the agreement which the appellant was being asked to sign.

On June 24, 1972 the appellant's partner wrote to the D.C.A. as follows: —

"Dear Sir

Re: Tenancy Agreement

Reference your letter dated 3.5.1972 enclosing the tenancy agreement for signature, we have to invite your attention to the following observations:

(1) Clause 4(i) of the tenancy agreement:

The effect of the clause is that we will only have a three months tenancy agreement although on the face of it, it is stated three years. With such a clause, we will not have the confidence to lavish money in promoting this business to our mutual benefits, and beautifying our shop, the object being to turn it into an airport show piece. We have the apprehension that we will not be able to enjoy a secured term of 3 years, and that others may reap the fruit of our labour.

On this clause, we hope you would reconsider it. What we want is to have a secured term of 3 years provided we have not committed any serious breach of the tenancy agreement.

....

(2) In your letter DCA/1/72 dated 11.1.1972, you have given us an option for extension of 3 years subject to certain conditions at the expiry of the present term. We do not, however, find this in the tenancy agreement. Would it be an oversight? Please advise.

...."

This letter was replied to by a letter of June 27 on behalf of the D.C.A. which reads as follows: —

"Dear Sir,

Re: Tenancy Agreement

Your minute of the 24th instant refers.

We regret to advise that we are unable to reconsider Clause 4(i) of the Tenancy Agreement. Please note that this Clause is a standard one applicable and inserted in all our Agreements. However, you may be re-assured that if you observe carefully the rules and regulations of the Tenancy Agreement, your tenancy may be considered as secure for the period in question.

The option for the extension of your tenancy as contained in my letter DCA/1/72 dated 11.1.72 is not repeated in the Agreement as this letter may be taken as a part of your Tenancy Agreement with us...."

Their Lordships consider

(1) that the first paragraph of the letter of June 27 would be understood by any reasonable man as warranting that clause 4(i) is inserted in all tenancy agreements as a standard form, but will be put into operation by the Government only if the tenant fails carefully to observe the rules and regulations of the tenancy agreement. It has never been suggested by the Government that the appellant ever did fail carefully to comply with these rules and regulations.

(2) that the second paragraph of the letter of June 27 warrants that the third paragraph of the D.C.A.'s letter of January 11 shall be treated as incorporated in the tenancy agreement. This means that the appellant would have the option of extending his tenancy for three years from February 1, 1975. No reasonable person in the appellant's position would understand this second paragraph as meaning that during the period of the three year extension the lease was subject to determination by the D.C.A. on three months' notice, irrespective of whether or not the appellant had carefully observed the rules and regulations of the tenancy agreement. Relying on those warranties contained in the letter of June 27, 1972 the appellant then signed the tenancy agreement.

On October 30, 1974 the appellant wrote to the D.C.A. concerning his option to extend his tenancy for three years from February 1, 1975 and asking for an early confirmation of this extension of the tenancy. The appellant received no reply to his letter of October 30 but he received a letter dated January 18, 1975 in the following terms: —

"Mr. Chin Ah Loy
Chin International
Duty Free Shop
Arrival Hall
Singapore Airport
Singapore 19

Dear Sir,

TERMINATION OF TENANCY

Your tenancy to operate Shop No. 22 in the Arrival Hall will expire on 31 Jan 75.

2. Please be reminded that you are required to vacate the premises and remove all your stocks from our building as early as possible by midnight 31 Jan 75.

Yours faithfully,
CHAN WAH YIAN
for *Director of Civil Aviation*"

The appellant's solicitors answered this letter by a letter dated January 25, 1975 in which they asked to be informed why the D.C.A. had not confirmed the extension of the appellant's tenancy and the grounds for the D.C.A.'s refusal to extend the term if the D.C.A. was, in fact, refusing to do so.

On January 31, 1975 the Government answered the letter of January 25, 1975, as follows: —

"... we confirm that the Government has granted to you an extension of the said Tenancy Agreement with effect from February 1, 1975 on the same terms and conditions as the said Tenancy Agreement. Nevertheless we hereby give you 3 months' notice under clause 4(i) on the said Tenancy Agreement as extended hereunder to terminate your tenancy thereunder....

Please note that this notice expires on April 30, 1975...."

The Government appears to have overlooked that one of the terms of the tenancy agreement was the warranty by the Government that it would not attempt to put clause 4(i) of the agreement into operation unless the tenant failed carefully to observe the rules and regulations of the agreement. Accordingly, in their Lordships' opinion, the appellant was wrongfully prevented by the Government from entering, after midnight on April 30, 1975, the shop which he had rented for a term which had been extended until February 1, 1978. On May 3, 1975 the appellant's solicitors wrote a letter to the Attorney-General, paragraph 4 of which reads as follows: —

"Our client has built up his business at the Arrival Hall from scratch and he has spent more than $100,000 in advertising and in promoting his business. Our client's tenancy has been terminated for no other reason other than to enable the Singapore Airport Duty-Free Emporium (Private) Limited to reap the fruits of our client's labour. The Singapore Airport Duty-Free Emporium (Private) Limited, if the corporate veil is lifted, is in truth and in fact the Government or the interests of the Government despite whatever name you may give to it."

The Attorney-General, in answering this letter, never denied what was said in the paragraph cited above.

The appellant then brought an action for damages for breach of contract against the Attorney-General who represented the Government. The case was tried by Choor Singh J. who, in effect, decided that, as the tenancy was renewed for 3 years from February 1, 1975 on the same terms as those which applied to the first 3 years, the Government could not terminate the second term of 3 years unless the appellant had failed to comply with the "rules and regulations" of the tenancy agreement; and there was no suggestion, let alone a spark of evidence, that the appellant had ever done so. The learned judge found that the appellant was entitled to damages for the loss he suffered through the Government's wrongfully preventing him from operating his shop for 2 years and 9 months, i.e. from May 1, 1975 to January 31, 1978. The learned judge

assessed the damages as $604,890 and gave judgment for that amount.

The Attorney-General then appealed to the Court of Appeal which allowed the appeal and the appellant now appeals to their Lordships' Board.

Their Lordships agree entirely with the judgment of the learned trial judge. They have with respect come to the conclusion that the Court of Appeal has not given sufficient weight to paragraph 3 of the D.C.A.'s letter of January 11, 1972 addressed to the appellant.

The option promised in that paragraph (recited earlier in this judgment) is an option for an extension of the tenancy from February 1, 1975 for a period of 3 years and not three months as it would have been if clause 4(i) could be applied to cut down the option promised in the D.C.A.'s letter of January 11 and confirmed by his letter of June 27.

Their Lordships therefore allow the appeal, set aside the order of the Court of Appeal and restore the judgment of Choor Singh J. The respondent must pay the costs of the appeal to the Court of Appeal and of this appeal.

Appeal allowed.

Solicitors: *Baker & McKenzie; Jaques & Co.*

SINGAPORE REPORTS

PUBLIC PROSECUTOR v. G. CHOUDHURY

[C.C.A. (Wee Chong Jin C.J., Kulasekaram & Sinnathuray JJ.) October 30, 1980]

[Singapore — Magistrate's Appeal Nos. 112 & 112A of 1978 — Reservation of Questions of Law of Public Interest for the decision of the Court of Criminal Appeal]

Company Law — Insider trading — Questions reserved for court — Scope of s. 132A(1) — "facing a financial crisis" — "Specific confidential information" — Meaning of — Companies Act (Cap. 185), s. 132A — Securities Industry Act, 1970, s. 75A.

The respondent, chairman and chief executive of Ben & Co. Ltd., a public trading company claimed trial on six charges under section 132A(8) of the Companies Act (Cap. 185). He was convicted and sentenced to nine months' imprisonment on each charge, the sentences to run concurrently.

On appeal to the High Court (see [1980] 2 M.L.J. 231), Rajah J. held the six charges as framed were invalid. He allowed the appeal and quashed the convictions. On application by the prosecution, two questions were reserved for the decision of the Court of Criminal Appeal: a) whether in alleging that the accused had been dealing in the securities of Ben & Co. Ltd. by himself by disposing of 360,000 shares in a number of transactions on January 13, 1976, January 23, 1976, January 29, 1976, January 30, 1976 and February 3, 1976 and making use of confidential information that the company was facing a financial crisis, he could be described as having acted upon "specific confidential information" thereby committing a breach of provisions of section 132A(1) of the Companies Act (Cap. 185); and b) whether in law the charges Nos. 1 to 6 (DAC Nos. 286, 512-516 of 1978) disclosed offences under section 132A of the Companies Act and punishable under section 132A(8) of the said Act.

Held, answering both questions in the affirmative: (1) it was a question of fact in each case to be resolved on the evidence adduced at the hearing of the case as to what is "specific confidential information;

(2) "information", as used in the section, meant knowledge of a particular event or situation such as advice, communication, intelligence, news, notification and the like;

(3) the knowledge which the respondent had of the then financial situation of the company was specific information within the meaning of section 132A of the Companies Act. It was the kind of specific information anyone familiar with the market knows that could markedly affect the prices of the particular shares and could result in the suspension of the trading of the shares on the Stock Exchange;

(4) in the view that it was one of the kinds of confidential information that an insider might not use for his own benefit and to the detriment of the investing public, the Legislature had enacted section 132A;

(5) the learned District Judge was therefore right when he held that knowledge of a financial crisis in a company was specific information as it was capable of being pointed to, identified and unequivocally expressed;

(6) a defective or imperfect charge was one that did not have sufficient particulars to give notice to the accused of the *manner* in which he was alleged to have committed the offence: section 159 of Criminal Procedure Code;

(7) in this case, the phrase "facing a financial crisis" had no reference to the *manner* in which the respondent was alleged to have committed the offences as knowledge was not *actus reus* of the offence; the allegation was not essential to constitute the offence and the phrase could have been omitted by the prosecution without affecting the charge.

Cases referred to:-

(1) *Ryan* v. *Triguboff* (1974-76) 1 A.C.L.R. 337; [1976] 1 N.S.W.L.R. 588.

(2) *Chaloner* v. *Bolckow* (1877-8) L.R. 3 App. Cas. 933, 938.